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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1747**

Bruggeman Construction Co.,
Appellant,

vs.

City of Stillwater,
Respondent,

Town of Stillwater,
Respondent.

**Filed July 28, 2009
Affirmed
Kalitowski, Judge**

Washington County District Court
File No. 82-CX-07-006766

Grover C. Sayre, III, Ernest F. Peake, Jordan W. Sayre, Leonard, O'Brien, Spencer, Gale & Sayre, Ltd., 100 South Fifth Street, Suite 2500, Minneapolis, MN 55402 (for appellant)

James J. Thomson, Sarah J. Sonsalla, Kennedy & Graven Chartered, 470 U.S. Bank Plaza, 200 South Sixth Street, Minneapolis, MN 55402 (for respondent City of Stillwater)

Thomas M. Scott, Campbell Knutson, P.A., 317 Eagandale Office Center, 1380 Corporate Center Curve, Eagan, MN 55121 (for respondent Town of Stillwater)

Considered and decided by Kalitowski, Presiding Judge; Klaphake, Judge; and
Hudson, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant Bruggeman Construction Co. challenges an adverse grant of summary judgment that upheld a decision by respondent City of Stillwater (the city) denying appellant's request for annexation, rezoning, and amendment of the city's comprehensive plan. Appellant argues that the district court erred in (1) concluding that the city rather than the joint board had sole authority to annex property; (2) failing to conclude that the city's decision is arbitrary and capricious; (3) dismissing appellant's equal protection claim; and (4) denying its petition for a writ of mandamus. We affirm.

DECISION

In 1996, the city and the Town of Stillwater (the township) entered into a joint agreement (the annexation agreement) for the annexation of land located within the township into the city. In addition to providing the timeline and conditions for annexation, the annexation agreement established a joint board to provide for the joint exercise of governmental authority between the city and the township.

Appellant owns an 18.3-acre tract of real property (the property) consisting of three parcels located within the township and adjacent to the city. Appellant sought to develop the property into a residential community and initially petitioned the city in 2000 for annexation of the property. Following numerous hearings and the completion of several reports and studies of the area, appellant renewed its petition for annexation in August 2006 and also sought an amendment of the city's comprehensive plan and a rezoning of the property. On August 29, 2006, the joint board voted to approve the

annexation request but took no action regarding zoning or amendment of the comprehensive plan.

Following several meetings, the city council denied appellant's petition for annexation and denied appellant's requests for rezoning and amendment of the comprehensive plan. After the city council's denial, appellant filed a complaint in district court and sought a writ of mandamus based on the joint board's prior approval of the annexation request. Appellant sought to compel the city to (1) annex the property; (2) change its comprehensive plan; and (3) rezone the property. The district court denied appellant's petition for a writ of mandamus, granted respondents' motions for summary judgment, and dismissed appellant's claims.

"On appeal from summary judgment, we determine whether there are any genuine issues of material fact and whether a party is entitled to judgment as a matter of law." *Wensmann Realty, Inc. v. City of Eagan*, 734 N.W.2d 623, 630 (Minn. 2007) (affirming the denial of a proposed amendment to a city's comprehensive plan). When the material facts are not in dispute, we review the district court's application of the law de novo. *Id.* We view the facts in the light most favorable to the party against whom summary judgment was granted. *Id.*

I.

Appellant contends that under the annexation agreement and relevant statutes, the joint board rather than the city possesses the sole and exclusive power to annex property and that the district court erred as a matter of law in concluding otherwise. We disagree.

Annexation Agreement

The annexation agreement divides the annexation property into four “Phases.” The parties do not dispute that the property is “Phase IV” property. Relevant to Phase IV property, the annexation agreement provides:

4.05 Phase IV property may be annexed by the City filing a Resolution with the Minnesota Municipal Board any time after January 1, 2015.

. . . .

4.08 The City is free to deny an annexation or extend the timing of a phase at any time at its sole discretion. This Agreement does not confer any rights upon any individual property owner to require the City to annex his or her property.

4.09 As an exception to the Phasing Schedule, the City may annex property not described in Phases I, II, or III by Resolution if the property is adjacent to the City, is petitioned for by one hundred percent (100%) of the property owners within the area to be annexed and if the resulting annexation will not create a level of growth that exceeds the one hundred twenty (120) dwelling units per year limitation.

Appellant argues that section 4.08 does not apply to his petition for annexation because that section “restricts individual property owners from claiming a vested interest in annexation” after the dates for annexation of a particular phase have passed. We disagree. The plain language of section 4.08 provides that the city “is free to deny an annexation . . . at any time at its sole discretion.” Nothing in section 4.08 limits its application to annexation only after the dates contained in sections 4.02 through 4.05 have passed.

Relying on a 2006 report by the city's community development director, appellant argues that the city has previously confirmed the joint board's authority to annex property. But this report does not support appellant's argument. The report states that "[t]he property is located within the Phase IV annexation area, which provides for annexation in 2015. There is however a provision that allows the City Council the discretion to approve earlier annexation [of Phase IV property] if several criteria are met." The report then lists the criteria, one of which is that the joint board has to approve of the annexation. Although the early annexation criteria includes approval of the joint board as a requirement for annexation, the annexation agreement vests in the city the sole discretion to deny an annexation. Thus, the community development director's report does not, as appellant argues, confirm the joint board's authority to annex property. We conclude that this report fails to confirm the joint board's authority to annex property.

Sections 414.0325 and 462.3535

Appellant argues that Minnesota Statutes section 414.0325 gives the joint board the power to annex appellant's property. We disagree.

Minnesota Statutes Chapter 414 provides for municipal boundary adjustments including annexation. Minn. Stat. §§ 414.01-.12 (2008). Section 414.0325 provides for a method of annexation called "orderly annexation." Minn. Stat. § 414.0325 (2008). Orderly annexation is initiated when a city and a township pass a joint resolution agreeing to designate certain property within an unincorporated area as in need of annexation. *Id.*, subd. 1(a) (2008). The joint resolution is commonly called an "orderly annexation agreement." *Id.*, subd. 6 (2008). Here, the parties agree that the city and

township used the orderly annexation method. And the annexation agreement itself states that it was entered into pursuant to the orderly annexation statute.

Appellant contends that subdivision 6 of section 414.0325 mandates that the city give up its rights to pursue other annexation methods. But subdivision 6 merely states that an “orderly annexation agreement is a binding contract upon all parties to the agreement” and that “[i]f an orderly annexation agreement provides the exclusive procedures by which the unincorporated property identified in the agreement may be annexed to the municipality, the municipality shall not annex that property by any other procedure.” Minn. Stat. § 414.325, subd. 6. Nothing in this language requires the city to convey all of its powers of annexation to the joint board. Moreover, as quoted above, the annexation agreement at issue here gives the city the “sole discretion” to “deny an annexation” at any time.

Appellant also contends that the joint board has the power to annex property pursuant to section 414.0325, subdivision 5. Subdivision 5(b) states, “[a] board or other planning authority designated or established pursuant to an orderly annexation agreement shall have all of the powers contained in sections 462.351 to 462.364.” Minn. Stat. § 414.0325, subd. 5(b) (2008). Appellant argues that those powers include annexation powers contained in section 462.3535, and therefore, once the joint board voted in favor of annexation, the city was required to annex the property. We disagree.

Section 462.3535 concerns community-based planning and provides for the preparation and implementation of a community-based comprehensive municipal plan. Minn. Stat. § 462.3535, subd. 1 (2008). Subdivision 5 of this section discusses orderly

annexation agreements and a process for annexation. *Id.*, subd. 5 (2008). But this subdivision contains no express delegation of annexation authority to a joint board. Moreover, subdivision 5 “provides the sole method” of annexation “*unless the parties agree otherwise.*” *Id.* (emphasis added). And here, the plain language of the annexation agreement demonstrates that the city and the township have otherwise agreed. Sections 3 and 4 of the annexation agreement provide that the city *may* annex Phase IV property and the city “*is free to deny an annexation or extend the timing of a phrase at any time at its sole discretion.*” (Emphasis added.) In addition, no language in the annexation agreement expressly authorizes the joint board to annex property.

We conclude that the district court properly determined that the joint board does not have the sole and exclusive authority to annex property.

II.

Appellant argues that the district court erred in concluding that the city’s denial of appellant’s application for rezoning and amendment of the comprehensive plan was rational. We disagree.

“Because land use planning and regulation are within a city’s legislative prerogative, the city has broad discretion when it makes decisions in that arena.” *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 174 (Minn. 2006). Municipal land use decisions are reviewed using a rational basis standard. *Id.* at 179. Our scope of review is narrow and we uphold a city’s land use decision unless the party challenging that decision establishes that the decision is unsupported by any rational basis related to promoting the public health, safety, morals, or general welfare. *Id.* at 180. No

deference is given to conclusions of the district court and our review focuses on the legal sufficiency and factual basis for the reasons given by the city for its decision. *Id.*

The city council found its existing street network incapable of handling the increased traffic likely to be generated by appellant's development of the property. This finding was supported by additional findings that the property would have no direct access to an arterial street and that the most direct route to major destinations would be along routes that lack stoplights. Thus, the city concluded that appellant's requested annexation, rezoning, and comprehensive plan amendment were premature until improvements to the street network are addressed.

Arterial Street

Appellant argues that the city had no rational basis on which to find that the property has no direct access to an arterial street. Appellant contends that the property has access to County Road 12, which is an arterial street. For support, appellant cites a map contained in appellant's concept plan for the property. But after citing to the concept plan, appellant concedes that "the concept plan in question has no bearing on the merits of [appellant's] current application for rezoning and comprehensive plan amendment." Therefore, appellant has not established that the city's reliance on its arterial street finding is without rational basis because of a map in the concept plan.

Stoplight

Appellant argues that the city may not rationally rely on the absence of a stoplight on Boutwell Road to deny its requests. We disagree. The problems caused by the absence of stoplights, such as difficulty for traffic to maneuver safely through those

intersections, provide a rational basis for the city's conclusion that annexation of the property is premature until further street network improvements are addressed through the comprehensive plan.

Neal Avenue Extension

Appellant contends that the city's reliance on the lack of a Neal Avenue extension is unreasonable because such an extension is unnecessary. But the city's findings on the lack of a north-south collector street (Neal Avenue) are simply part of the city's determination that the street network requires additional improvements to accommodate orderly growth. This finding reasonably supports the city's conclusion that annexation of the property is premature.

Increased Traffic

Appellant argues that the district court erred by ignoring evidence, specifically the Revised Boutwell South Area Plan (revised plan), which shows that existing roads can accommodate any increased traffic caused by the development of the property. Appellant also argues that the only evidence that increased traffic would create problems are the statements of neighboring property owners.

But the record does not support appellant's contentions. The revised plan states that "[t]he number of trips would be well within the capacity of existing area roadways, *particularly when Manning Avenue . . . is upgraded, and planned improvements have been completed to Boutwell Road.*" (Emphasis added.) The revised plan states that new traffic "may create traffic problems and delays" at the Boutwell-Manning and County Road 12-Manning intersections. Significantly, the revised plan recommends that

annexation and development of the land in the South of Boutwell Planning area should not occur until a specific Neal Avenue connection location and design have been determined. Additionally, both the planning commission and the county's senior transportation planner expressed concerns about increased traffic.

In sum, we conclude that appellant has not shown that the city's decision lacked rational basis.

III.

Appellant challenges the district court's summary dismissal of its equal protection claim predicated on the denial of its request for annexation, zoning, and comprehensive plan amendment. Appellant contends that no party sought summary judgment on the equal protection claim and therefore, the district court erred in dismissing the claim. We disagree.

The record indicates that the equal protection claim was presented to the district court for summary judgment. Appellant moved for "complete summary judgment upon all of its claims" and the township specifically sought summary judgment on the equal protection claim. Although appellant argued in a footnote to its summary judgment memorandum that fact issues precluded summary judgment on the equal protection claim, appellant did not present the district court with evidence or argument regarding the claimed fact issues. Likewise on appeal, appellant has not presented argument or evidence regarding what fact issues preclude summary judgment. Thus, we conclude that appellant has not shown that summary judgment on its equal protection claim was error.

IV.

Appellant challenges the denial of its writ of mandamus. Because we have concluded that the joint board has no authority to annex property, there is no basis for appellant's mandamus request.

Affirmed.